

STATE OF SOUTH CAROLINA

(Caption of Case)

Progress Energy Carolinas, Inc.'s Integrated
Resource Plan (IRP)

BEFORE THE
PUBLIC SERVICE COMMISSION
OF SOUTH CAROLINA

COVER SHEET

DOCKET

NUMBER: 2011 - 8 - E

(Please type or print)

Submitted by: James Blanding Holman IV

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DOCKETING INFORMATION (Check all that apply)

☐ Emergency Relief demanded in petition ☐ Request for item to be placed on Commission's Agenda expeditiously

☐ Other:

INDUSTRY (Check one)	NATURE OF ACTION (Check all that apply)			
<input checked="" type="checkbox"/> Electric	<input type="checkbox"/> Affidavit	<input type="checkbox"/> Letter	<input type="checkbox"/> Request	
<input type="checkbox"/> Electric/Gas	<input type="checkbox"/> Agreement	<input type="checkbox"/> Memorandum	<input type="checkbox"/> Request for Certification	
<input type="checkbox"/> Electric/Telecommunications	<input type="checkbox"/> Answer	<input checked="" type="checkbox"/> Motion	<input type="checkbox"/> Request for Investigation	
<input type="checkbox"/> Electric/Water	<input type="checkbox"/> Appellate Review	<input type="checkbox"/> Objection	<input type="checkbox"/> Resale Agreement	
<input type="checkbox"/> Electric/Water/Telecom.	<input type="checkbox"/> Application	<input type="checkbox"/> Petition	<input type="checkbox"/> Resale Amendment	
<input type="checkbox"/> Electric/Water/Sewer	<input type="checkbox"/> Brief	<input type="checkbox"/> Petition for Reconsideration	<input type="checkbox"/> Reservation Letter	
<input type="checkbox"/> Gas	<input type="checkbox"/> Certificate	<input type="checkbox"/> Petition for Rulemaking	<input type="checkbox"/> Response	
<input type="checkbox"/> Railroad	<input type="checkbox"/> Comments	<input type="checkbox"/> Petition for Rule to Show Cause	<input type="checkbox"/> Response to Discovery	
<input type="checkbox"/> Sewer	<input type="checkbox"/> Complaint	<input type="checkbox"/> Petition to Intervene	<input type="checkbox"/> Return to Petition	
<input type="checkbox"/> Telecommunications	<input type="checkbox"/> Consent Order	<input type="checkbox"/> Petition to Intervene Out of Time	<input type="checkbox"/> Stipulation	
<input type="checkbox"/> Transportation	<input type="checkbox"/> Discovery	<input type="checkbox"/> Prefiled Testimony	<input type="checkbox"/> Subpoena	
<input type="checkbox"/> Water	<input type="checkbox"/> Exhibit	<input type="checkbox"/> Promotion	<input type="checkbox"/> Tariff	
<input type="checkbox"/> Water/Sewer	<input type="checkbox"/> Expedited Consideration	<input type="checkbox"/> Proposed Order	<input type="checkbox"/> Other:	
<input type="checkbox"/> Administrative Matter	<input type="checkbox"/> Interconnection Agreement	<input type="checkbox"/> Protest		
<input type="checkbox"/> Other:	<input type="checkbox"/> Interconnection Amendment	<input type="checkbox"/> Publisher's Affidavit		
	<input type="checkbox"/> Late-Filed Exhibit	<input type="checkbox"/> Report		

STATE OF SOUTH CAROLINA
BEFORE THE PUBLIC SERVICE COMMISSION

DOCKET NO. 2011-8-E

)	
)	
In the Matter of:)	
)	MOTION FOR LEAVE TO FILE
Progress Energy Carolinas, Inc.'s)	REPLY IN SUPPORT OF PETITION
Integrated Resource Plan (IRP))	TO INTERVENE AND MOTION FOR
)	LEAVE TO FILE COMMENTS OUT
)	OF TIME
)	
)	

Pursuant to R. 103-829 of the S.C. Code of Regulations, the South Carolina Coastal Conservation League (“CCL”) and Southern Alliance for Clean Energy (“SACE”) (collectively, “Petitioners”) respectfully move for leave to file the attached reply to Progress Energy Carolinas, Inc.’s (“PEC’s”) response in opposition to their petition to intervene and motion for leave to file comments out of time in the above-captioned docket (the “Response”).

On September 1, 2011, PEC filed its 2011 Integrated Resource Plan (“IRP”), which was entered in the above-captioned docket. On October 17, 2011, Petitioners filed a petition to intervene in this docket, along with a motion for leave to file comments out of time on PEC’s 2011 IRP.¹ PEC filed its Response on October 19, 2011. In its Response, PEC asserts that Petitioners “misapprehend the nature of this [IRP] docket,” that “this is not a ‘proceeding,’” and Petitioners’ intervention petition and motion for leave to file comments out of time are “improper.” PEC Response at 1, 3. PEC’s opposition raises fundamental issues concerning the rights of interested parties to intervene in IRP proceedings before the Commission, as provided

¹ On October 18, 2011, Petitioners also filed a notice of request for allowable ex parte briefing.

by R. 103-825 of the S.C. Code of Regulations, and submit written comments, as provided by Commission Order No. 2010-124. Petitioners seek leave to reply because PEC, rather than simply attack the substance underlying the Petition, has opened a broader attack on the ability of interested parties to intervene and submit written comments in IRP proceedings at all. A reply would assist the Commission in evaluating the argument raised in PEC's Response.

WHEREFORE, Petitioners respectfully request leave to file the attached reply in support of their petition to intervene and motion for leave to file comments out of time in the above-captioned docket.

Respectfully submitted this 21st day of October, 2011.

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STATE OF SOUTH CAROLINA
BEFORE THE PUBLIC SERVICE COMMISSION

DOCKET NO. 2011-8-E

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)	
In the Matter of:)	
)	PETITIONERS' REPLY IN SUPPORT
Progress Energy Carolinas, Inc.'s)	OF PETITION TO INTERVENE AND
Integrated Resource Plan (IRP))	MOTION FOR LEAVE TO FILE
)	COMMENTS OUT OF TIME
)	

The South Carolina Coastal Conservation League ("CCL") and Southern Alliance for Clean Energy ("SACE") (collectively, "Petitioners") respectfully file this reply to Progress Energy Carolinas, Inc.'s ("PEC") Response in Opposition to Petition to Intervene and Motion to File Comments Out-Of-Time (the "Response").

On September 1, 2011, PEC filed its 2011 Integrated Resource Plan with the Commission, stating in a cover letter that it was doing so pursuant to S.C. Code Ann. §58-37-40. PEC's 2011 IRP was entered in the above-captioned docket. On October 17, 2011, Petitioners filed a petition to intervene in this docket (the "Petition"), along with a motion for leave to file comments out of time on the PEC 2011 IRP (collectively, the "Filings").¹ PEC filed its Response on October 19, 2011. In its Response, PEC argues that Petitioners' Filings should either be stricken or denied or, alternatively, treated as a request for an allowable ex parte briefing. For the reasons explained below and in Petitioners' intervention petition, the South Carolina Public Service Commission ("Commission") should reject PEC's arguments and grant Petitioners' intervention petition and motion for leave to file comments out of time.

¹ On October 18, 2011, Petitioners also filed a notice of request for allowable ex parte briefing.

I. The PEC 2011 IRP docket is a “proceeding” within the meaning of the Commission’s rules and policies.

According to PEC, this docket is not a “proceeding” in which a person or entity may intervene or comment. PEC Response at 1. PEC contends that an integrated resource plan (“IRP”) is not a pleading, but is filed only for informational purposes to meet the utility’s statutory duty. Id. at 1-2. PEC’s characterization of the IRP process ignores a critical fact: in preparing and filing its IRP, PEC must adhere to the IRP requirements established by the General Assembly and by the Commission.

S.C. Code Ann. § 58-37-40 requires electric utilities to prepare IRPs. For an electric utility subject to the jurisdiction of the Commission, such as PEC, S.C. Code Ann. § 58-37-40 provides that submission of an IRP as required by the Commission constitutes compliance with the section. The Commission established its current substantive IRP requirements in Order No. 1998-502, in which the Commission modified the prior IRP process designed to “determin[e] whether the plan is reasonable at that point in time,” Order No. 1991-1002 at 5, and required that IRPs contain the following information:

1. The demand and energy forecast for at least a 15-year period.
2. The supplier’s or producer’s program for meeting the requirements shown in its forecast in an economic and reliable manner, including both demand-side and supply-side options.
3. A brief description and summary of cost-benefit analysis, if available, of each option considered, including those not selected.
4. The supplier’s and producer’s assumptions and conclusions with respect to the effect of the plan on the cost and reliability of energy service, and a description of the external, environmental and economic consequences of the plan to the extent practicable.

Commission Order No. 1998-502; see also S.C. Code Ann. § 58-37-10 (2010) (defining “Integrated Resource Plan” to include the same content). Moreover, the Commission

ruled that it could require further information, and provide it to interested parties, if necessary to understand the above-required information. Order No. 1998-502.

As PEC recognizes, in addition to the substantive requirements established by Order No. 1998-502, the Commission has also established procedural requirements for IRP filings. Order No. 2010-124 provides in relevant part that 1) each regulated electric utility shall file its IRP by a certain date; 2) interested persons will be allowed 30 days to file written comments regarding the IRP; and 3) Commission Staff shall schedule an allowable ex parte briefing within 60 days of the filing.

The Commission's IRP requirements—containing both substantive components and procedural requirements enabling review by the Commission and the public—render IRP dockets, like the one at issue, “proceedings.” By filing a document with the Commission that must satisfy these requirements, PEC has initiated a proceeding in which the Commission may determine whether the information PEC provided complies with the applicable law. Although it is self-evident that an IRP is “a planning document,” PEC Response at 2, it is a planning document that must meet certain conditions. The process of determining whether PEC's IRP meets these prescribed requirements—the Commission's determination of the relevant facts contained within the utility's IRP and whether the plan satisfies the applicable law—constitutes a proceeding. See S.C. Code Ann. Regs. 103-804(Q). Therefore, Petitioners' intervention petition is proper.

II. The Commission's Practice of Holding Allowable Ex Parte Briefings on IRPs Confirms that IRP Dockets are Proceedings.

PEC also contends that an allowable ex parte briefing is part of the IRP process “precisely because the Commission recognizes that this is not a ‘proceeding’ or contested

case.” PEC Response at 2-3. Allowable ex parte briefings, however, may be heard “regarding any issue that is an issue in any *proceeding* or can reasonably be expected to become an issue in any *proceeding* . . . without notice and opportunity for all parties to participate in the communication.” S.C. Code Ann. § 58-3-260(B) (2010) (emphases added). Because the ex parte briefing exception pertains to “any fact, law, or other matter that is or can reasonably be expected to become an issue in a *proceeding*,” S.C. Code Ann. § 58-3-260(C)(6) (2010) (emphasis added), the use of ex parte briefings to discuss IRPs further supports the conclusion that there is a “proceeding” in which Petitioners can intervene. In fact, South Carolina law expressly accounts for the fact that hearings and allowable ex parte briefings are not mutually exclusive—initial briefings must be held “at least twenty business days prior to the *hearing in the proceeding* at which the matter that is the subject of the briefing is or can reasonably be expected to become an issue” and responsive briefings “at least ten business days prior to the *hearing in the proceeding*.” S.C. Code Ann. § 58-3-260(C)(6)(a)(vi), (vii) (2010) (emphases added). Therefore, PEC’s premise that because ex parte briefings are held in IRP dockets, an IRP docket is not a “proceeding” is contrary to S.C. Code Ann. § 58-3-260(C)(6) and is without merit.

III. PEC’s Argument That Persons or Entities May Not Comment on IRPs Should Be Rejected.

As noted above, PEC asserts that persons or entities may not comment in IRP proceedings, PEC Response at 1, and that Petitioners have no right to submit comments. This is simply incorrect. PEC itself recites that under Order No. 2010-124, interested persons are allowed to file written comments regarding an IRP. *Id.* at 2. Petitioners acknowledge having missed the 30-day deadline for submission of comments, but have

requested that the Commission allow them to submit comments on the PEC IRP out of time. Therefore, even if the Commission determines that Petitioners do not have the right to intervene in the present docket, this should not bar Petitioners from submitting comments on the PEC IRP out of time if the Commission finds good cause to do so.

IV. PEC's Alternative Request To Convert an Intervention Petition into an Allowable Ex Parte Briefing Request Should be Rejected.

PEC asserts that, in the alternative, the Commission should treat Petitioners' intervention petition as an ex parte briefing request. PEC Response at 1, 3. This request should be rejected because intervention is proper. Moreover, in asking the Commission to convert an intervention petition into an ex parte request, PEC suggests a false conflict between party status and ex parte briefings. As previously discussed, parties to a docket can, and often do, request ex parte briefings on the subject matter of the docket, as Petitioners have done here. Therefore, Petitioners' intervention petition should be granted, regardless of whether Petitioners may conduct an allowable ex parte briefing before the Commission.

V. Petitioners Have Established Standing to Intervene.

Finally, in a footnote, PEC challenges Petitioners' standing to intervene, claiming that Petitioners "alleg[e] general interest or that unspecified members of theirs have standing." PEC Response at 1, fn. 1. Petitioners have established standing to intervene in this proceeding, and PEC's cursory effort to quash Petitioners' right to intervene should also be rejected.

Petitioners have asserted sufficient protectable and tangible interests of their members in the subject matter of this proceeding. See Petition at ¶¶ 3-7. Each Petitioner organization counts within its members PEC ratepayers who have a direct

personal stake in this proceeding. Id. A utility's IRP, and the resource mix contained therein, impacts the cost of electricity to customers. Indeed, most, if not all, of the required components of the IRP involve cost: IRPs must include a program for meeting demand and energy needs in an "economic" manner; cost-benefit analysis descriptions; assumptions and conclusions with respect to "the effect of the plan on the cost ...of energy service"; and a description of the economic consequences of the plan. Commission Order No. 1998-502; S.C. Code Ann. § 58-37-10. The way in which PEC conducts its integrated resource planning, whether it does so in a fiscally and environmentally responsible manner, and the impact on rates, are direct interests of Petitioners' members.

These interests are also directly relevant to Petitioners' organizational purposes. See Petition at ¶¶ 3-4. Intervening in this proceeding to ensure that PEC's IRP evaluates resource alternatives and results in a low-cost, reliable portfolio of supply- and demand-side resources with minimal harmful environmental impacts is in line with this purpose, and Petitioners' participation will assist the Commission in reviewing PEC's IRP. Therefore, Petitioners have standing to intervene.

For the reasons described above and in the Petition, the Commission should reject PEC's arguments, grant the Petition, and allow Petitioners to submit comments in this docket.

Respectfully submitted this 21st day of October, 2011.

s/ J. Blanding Holman IV
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STATE OF SOUTH CAROLINA
BEFORE THE PUBLIC SERVICE COMMISSION

DOCKET NO. 2011-8-E

In the Matter of:)
)
)
) CERTIFICATE OF SERVICE
Progress Energy Carolinas,)
Incorporated's Integrated Resource)
Plan (IRP))
)
)

I certify that the following persons have been served with one (1) copy of Petitioners' motion for leave to file reply and attached reply to Progress Energy Carolinas, Inc.'s response in opposition to their petition to intervene and motion for leave to file comments out of time via electronic mail and U.S. First Class Mail to the persons named below at the addresses set forth:

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s/ J. Blanding Holman, IV
J. Blanding Holman IV
On behalf of Petitioners

This 21st Day of October 2011